SINGAPORE REPORTS.

MOHAMED IDRIS BIN HAJI MOHAMED SAID v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) Feb. 25, 1948]
[Singapore — Magistrates' Appeal No. 166 of 1947]

Criminal Procedure Code S. 254 — Change of Magistrate — Whether new Magistrate can act on evidence taken by former Magistrate.

In this case while the case was being heard the Magistrate who had begun the hearing of the case left the Colony and another Magistrate continued the hearing. The new Magistrate acted on the evidence recorded by the former Magistrate and subsequently convicted the appellant.

Held, (1) that the power given order Section 254 of the Criminal Procedure Code is of value when it is used for evidence of a more or less formal character or where the witness cannot be produced; (2) that in this case the decision was unsatisfactory as the witness whose evidence was acted on was a crucial one and there was nothing to show that it was not possible to produce the witness, and therefore there must be a re-trial.

MAGISTRATES' APPEAL.

Mark Morrison for the Appellant.

M. Buttrose (D.P.P.) for the Defendant.

Murray-Aynsley, C.J.:—In this case the appellant was employed as a clerk by the Singapore Harbour Board. On September 30th, 1946, a detective of the Harbour Board Police saw him carrying various articles, including a bottle of gin, a lady's hand-bag, two tins containing cake and four tubes of tooth-paste. The evidence showed that it would be within the scope of his duties to collect things of that kind, if he found them lying about, and place them in proper custody. The whole question of whether the appellant was guilty of stealing the goods in question depended, therefore, on what inference the Court could draw from the circumstances in which the detective found the appel lant carrying; whether the appellant had concealed them on his person, or whether he had put various articles inside his shirt (or coat, as the prosecution alleged).

Unfortunately while the case was being heard in the Court below the Magistrate who had begun the hearing of the case left the Colony and another Magistrate continued the hearing. By this time the appellant was represented by counsel. The question arose whether the new Magistrate should exercise the powers given him under section 254 and act on evidence recorded by his predecessor. The Magistrate seems to have been persuaded by counsel for the defence into acting on this evidence. He subsequently convicted the appellant. When the case came before me on appeal I did not consider that the trial could be regarded as satisfactory. The power given under the section is of value, particularly when it is used for evidence of a more or less formal character, or where the witness cannot be produced. In the present case the witness whose evidence was so acted on was a crucial one, and I cannot think that a decision can be regarded as satisfactory where it is based on evidence given before another Magistrate, particularly when there is nothing to prevent the witness from giving evidence on the further hearing.

I therefore acted on proviso (b) of the same section and ordered a new trial.

New Trial Ordered.

REX. v. TEO AH LAI AND 3 OTHERS.

[Special Case (Thorogood, J.) March 12, 1948]
[Singapore — Special Case No. 1 of 1948]

Singapore Colony Order in Council 1946 — Departmental Titles (Alteration) Ordinance No. 15 of 1937 — Whether Advisory Council can exercise the power of Legislative Council under S. 3 of Departmental Titles (Alteration) Ordinance — Certificate of Chemist — Criminal Procedure Code S. 427.

This was a special case forwarded for the opinion of the Court as to (1) whether the power of the Legislative Council under Section 3 of the Departmental Titles (Alteration) Ordinance No. 15 of 1937, has been transferred to the Advisory Council (2) whether if the said power has been so transferred a certificate of analysis under the hand of a "Chemist, Singapore" is admissible in evidence.

Held, (1) that the power of the Legislative Council under Section 3 of the Departmental Titles (Alteration) Ordinance No. 15 of 1937 had not been transferred to the Advisory Council; (2) that therefore the Certificate of the Chemist was not admissible in evidence under Section 427 of the Criminal Procedure Code.

Case referred to:—

(1) *Deputy Public Prosecutor v. Tan Ah Guat* (1947) 13 M.L.J. 32.

SPECIAL CASE.

M. Buttrose for the Crown.

D. K. Walters as *Amicus Curiae.*

Thorogood, J.: — This is a special case forwarded by one of the District Judges of Singapore. The facts considered to be proved are fully set out by the learned District Judge. The question of law for the opinion of this Court is whether the power of the Legislative Council under Section 3 of the Departmental Titles (Alteration) Ordinance No. 15 of 1937, has been